

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HERMAN TAMRAT,
Plaintiff,

v.

ALAMEDA COUNTY, et al.,
Defendants.

Case No. [20-cv-01324-PJH](#)

**ORDER OF DISMISSAL WITH LEAVE
TO AMEND**

Plaintiff, a state prisoner, has filed a pro se civil rights complaint under 42 U.S.C. § 1983. He has been granted leave to proceed in forma pauperis.

DISCUSSION

STANDARD OF REVIEW

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review the court must identify any cognizable claims, and dismiss any claims which are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. *Id.* at 1915A(b)(1),(2). Pro se pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement of the claim showing that the pleader is entitled to relief." "Specific facts are not necessary; the statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."" *Erickson v. Pardus*, 551 U.S. 89, 93 (2007)

(citations omitted). Although in order to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. . . . Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. The United States Supreme Court has recently explained the “plausible on its face” standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged deprivation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

LEGAL CLAIMS

Plaintiff presents many allegations of mistreatment and violations of his rights by jail guards over a two-year period.

Pursuant to Fed. R. Civ. P. 8(a)(2), a plaintiff must provide “a short and plain statement of the claim showing that the pleader is entitled to relief....” Rule 8 requires “sufficient allegations to put defendants fairly on notice of the claims against them.” *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir.1991)). *Accord Richmond v. Nationwide Cassel L.P.*, 52 F.3d 640, 645 (7th Cir.1995) (amended complaint with vague and scanty allegations fails to satisfy the notice requirement of Rule 8.) “The propriety of dismissal for failure to comply with Rule 8 does not depend on whether the complaint is wholly without merit,” *McHenry v. Renne*, 84 F.3d 1172, 1179 (9th Cir.1996).

Moreover, “[M]ultiple claims against a single party are fine, but Claim A against Defendant 1 should not be joined with unrelated Claim B against Defendant 2.” *George v. Smith*, 507 F.3d 605, 607 (7th Cir. 2007). “Unrelated claims against different defendants belong in different suits,” not only to prevent the sort of “morass” that a multi-claim, multi-defendant suit can produce, “but also to ensure that prisoners pay the required filing fees – for the Prison Litigation Reform Act limits to 3 the number of frivolous suits or appeals that any prisoner may file without prepayment of required fees.” *Id.* (citing 28 U.S.C. § 1915(g)).

The complaint is 100 handwritten pages and names 20 defendants. Plaintiff presents allegations concerning dozens of incidents at Santa Rita Jail from 2016 to 2018. Among the many allegations, he states that his cane was improperly confiscated, guards failed to protect him from being beaten and sexually assaulted by other inmates, he received inadequate medical care, he was denied a clean cell and clean laundry, his legal mail was improperly handled, his due process rights were violated in the grievance process and he was the victim of excessive force by guards. The majority of these incidents are unrelated other than they happened at the same jail over a two-year period. In addition, some of these incidents appear untimely.

Plaintiff’s complaint in this action illustrates the “unfair burdens” imposed by complaints, “prolix in evidentiary detail, yet without simplicity, conciseness and clarity” which “fail to perform the essential functions of a complaint.” *McHenry*, 84 F.3d at 1179-80. Plaintiff has also presented many unrelated claims. The complaint is dismissed with leave to amend. Plaintiff must only present a few related claims in an amended complaint and describe how the specific defendants violated his rights. Other claims must be brought in separate cases.

Plaintiff is also informed that section 1983 does not contain its own limitations period. The appropriate period is that of the forum state’s statute of limitations for personal injury torts. See *Wilson v. Garcia*, 471 U.S. 261, 276 (1985), *superseded by statute on other grounds as stated in Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369

377-78 (2004); *Two Rivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999). In California, the general residual statute of limitations for personal injury actions is the two-year period set forth at California Civil Procedure Code § 335.1 and is the applicable statute in § 1983 actions.¹ The statute of limitations is tolled for the period in which a prisoner administratively exhausted his underlying grievances, pursuant to the requirements of the PLRA. See *Brown v. Valoff*, 422 F.3d 926, 942-43 (9th Cir. 2005) (“the applicable statute of limitations must be tolled while a prisoner completes the mandatory exhaustion process”).

CONCLUSION

1. The complaint is **DISMISSED** with leave to amend in accordance with the standards set forth above. The clerk shall **SEND** plaintiff two blank civil rights forms. The amended complaint must be filed no later than **June 19 2020**, and must include the caption and civil case number used in this order and the words AMENDED COMPLAINT on the first page. The amended complaint must be no longer than **25 PAGES including exhibits**. Because an amended complaint completely replaces the original complaint, plaintiff must include in it all the claims he wishes to present. See *Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir. 1992). He may not incorporate material from the original complaint by reference.

2. It is the plaintiff's responsibility to prosecute this case. Plaintiff must keep the court informed of any change of address by filing a separate paper with the clerk headed “Notice of Change of Address,” and must comply with the court's orders in a timely fashion. Failure to do so may result in the dismissal of this action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

¹ California Civil Procedure Code section 352.1 recognizes imprisonment as a disability that tolls the statute of limitations when a person is “imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term of less than for life.” Cal. Civ. Proc. Code § 352.1(a). The tolling is not indefinite, however; the disability of imprisonment delays the accrual of the cause of action for a maximum of two years. See *id.*

United States District Court
Northern District of California

IT IS SO ORDERED.

Dated: May 12, 2020

/s/ Phyllis J. Hamilton

PHYLLIS J. HAMILTON
United States District Judge